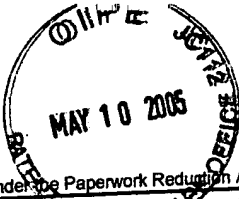




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PTO/SB/64 (09-04)

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
083174

First named inventor: **FRANZ A. Wakefield**

Application No.: **09 / 877,729**

Art Unit: **2174**

Filed: **6/8/00 & 6/8/01**

Examiner: **Boris Pesin**

Title: **Method and system for creating, using and modifying
multifunctional website hotspots.**

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or
action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration
date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee
☒ Small entity-fee \$ **750** (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of **RCE (Request For Continued Exam)** (identify type of reply):

☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the
USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to
complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any
comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer,
U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED
FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

 Signature

5.5.05

Date

FRANZ A. WAKEFIELD
Typed or printed name

09/877,729 :APP #
Registration Number, if applicable

17731 North West 14th CT.
Address

305 + 624.3282
Telephone Number

Miami, Florida 33169
Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other: See Copy of Interview Summary,
& Virginia Handbook.

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

5/5/05
Date

 Signature

FRANZ A. Wakefield
Typed or printed name of person signing certificate



In The United States Patent and Trademark Office

Appn. Serial Number: 09/877,729

Appn. Filed: 2001 Jun. 8

Prov. Filed: 2000 Jun. 8

Prov. Serial Number: 60/210,300

Applicant: **Franz A. Wakefield**

Title: **Method And System For Creating, Using And Modifying
Multifunctional Website Hotspots**

Examiner/GAU: **Boris Pesin/Pinchus Laufer/Brian L. Johnson/Paul Sewell**

PTO Supervisor: **Kristine Kincaid**

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Miami, 2005 May 02 Monday

INTERVIEW SUMMARY

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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Sir & Madame:

In response to telephonic discussions with Examining Core 2100, and the Interview
Summaries received by The Applicant on 2005 May 04, please see the Telephonic Phone
discussions below:

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TECHNOLOGY CENTER 2100 COMMUNICATIONS

- Dates:
1. On 10/6/04: duration ~ 2 hours---Boris Pesin, Examiner.
 2. On or about 10/13/04: duration ~ 40 minutes, **1 conversation**
Pinchus Laufer.
 3. April 25, 2005: duration ~ 10 minutes---Boris Pesin, Examiner
 4. April 26, 2005: duration ~ 30 minutes---Brian L. Johnson
 5. On or about April 27, 2005 ~ 20 minutes---Paul Sewell

Types: Telephonic

Exhibit Shown: 1/7/05 Affidavit and accompanying
evidence, walk-through and discussed with
Paul Sewell.

Definite Claims discussed: N/A

Identification of prior art discussed: The effective date of Horowitz.

Agreement with respect to the claims: N/A

SUBSTANCE OF COMMUNICATIONS

I.

Substance of Telephonic Communication on 10/06/04, with Examiner:

I Applicant, and The Examiner, discussed what would be necessary (content and form requirements, and objections to) for an acceptable Affidavit pursuant to 37 CFR § 1.131 to place the patent application in an allowable condition. The Examiner could not answer

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the questions as to what would suffice “greater weight” of evidence under 37 CFR § 1.131 (for example; whether 105 pages of “Hard Evidence” would be sufficient as opposed to 290 pages), but a discussion did occur about particular evidence that The Examiner wanted to comment on as Applicant explained the DEPTH of possible evidence and the obstacles that stood ahead of Applicant, before **A REPLY** to The Final Rejection could be submitted. The Examiner in an email dated 10/13/04 referred I Applicant to Pinchus Laufer, as stated below.

- **Excerpt from email communication: 10/13/04 at 2:20 PM**

“For any questions regarding the format of the affidavit please contact Pinchus Laufer at (703) 306-4160. He is a specialist in affidavit practice and can further assist you in the prosecution of your case.”

We discussed the following topics and points in our communication:

1. Conception of Invention.
2. Conception of Invention & Reduction to Practice being Simultaneous.
3. The effective date of reference to validate the invention prior to the prior art.
4. Diligence and how much evidence would be needed to prove Diligence.
5. The claims of the invention being valid in different software languages.
6. Actual and Constructive Reduction to Practice of the invention.
7. The fact that the invention is being utilized for commerce, i.e. through a profit corporations, trademarks, trade secrets, domain names, business plans/methodologies, and marketing/sales plans.

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II.

The Substance of the Telephonic Communication with Pinchus Laufer on or about 10/13/04:

I Applicant and Pinchus Laufer, Special Program Examiner & Affidavit Specialist, discussed what should be included in The Affidavit which would be **A REPLY** to The Final Rejection and the form that The Affidavit should take so that it would be in compliance with 37 CFR § 1.131. Mr. Laufer directed that the claims should be placed in The Affidavit or reference to included, that the relevant cases should be included which could act as persuasion to the points being proven, and that the specific references, and their page numbers, from the exhibits should be placed in the body of The Affidavit.

Mr. Laufer communicated to I Applicant, that "I can't give you legal advise," at which time I reassured Mr. Laufer that I was not asking for his legal opinion. He also suggested that I Applicant called him back in three days, but I Applicant found that there was no need for further discussion regarding the form and content requirements and objections to the like for **THE REPLY** to the Final Rejection. **APPLICANT WILL NOTE:**

that there were other email communications ("calls") to Mr. Laufer in his absence from The USPTO, two (2), on 4/23/05 regarding The Advisory Action, of which there was no reply. Mr. Laufer has also included my inquiries in these emails, the 2004 Affidavit discussion, and the substance (a general summary) of a telephonic communication with Mr. Paul Sewell, all in his 5/2/05 Interview Summary record.

III.

The Substance of the Telephonic Communication with Boris Pesin, The Examiner on April 25, 2005:

I Applicant and The Examiner, Mr. Boris Pesin, discussed an email communication that was sent to The Examiner. The email is quoted below:

- **Email communication April 25, 2005 10:36 A.M. Eastern**

“ Dear Mr. Pesin,

I have received your email regarding the reason for the advisory action. You state the rule 1.116(e) as the reason for the advisory action and not a notice of allowance: But the advisory action states at the top of the page: ‘THE REPLY FILED 1/07/2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.’ This statement makes the conclusion that you did review the affidavit and evidence but it still was insufficient to place the application in condition for allowance. As such can you please give me the reason(s) why the Affidavit did not place the application in a condition for allowance? I need your reasoning so that I can have an appropriate reply in a petition under [37 CFR §] 1.137, if I decide to pursue this further. I spoke to an older examiner in Invention Assistance (Mr. Joe Narcavage), who stated that just a reason of [37 CFR §] 1.116(e) is insufficient reason in an advisory action to use to say that the Affidavit and the evidence that accompany and form part of the Affidavit, was not sufficient for placing the application in an allowable condition.”

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NOTE: I, Applicant also talked to two individuals in The Petitions Office in numerous phone conversations on or about April 22, 2005 (Mrs. Mary Ann Jenkins and Mrs. Charlema Grant) who reiterated that technically the patent was abandoned, that technically I would have to petition and that I should find out WHY the 1/7/05 Affidavit and evidence was not sufficient to place the application in an allowable condition. I was specifically told by Mrs. Grant to ask the examiner for his reasoning why the 1/7/05 Affidavit did not place the Application in an allowable condition, because I would need to include a response to this reasoning and deficiency in any petition hereafter.

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The Examiner re-iterated 37 CFR § 1.116 (e) as his reasoning and advised Applicant again to talk to Pinchus Laufer. The Examiner stated that he was told to respond in the advisory action using that particular regulation (§ 1.116 (e)), and that I should talk to Pinchus Laufer regarding the reasoning behind the selection of that rule (Mrs. Kincaid also requested that I Applicant speak to Mr. Laufer about why the advisory action was generated). Applicant suggested that Mr. Pesin should argue relevant statutes and regulations that support the entering of the Affidavit because in the end it is his name on the patent application. Applicant also at the end of the phone conversation suggested that The examiner review 37 CFR § 1.116 (b) (1), at which point The Examiner agreed to review the 1.116 (b) (1) regulation.

- **37 CFR § 1.116 (b) STATES:**

“ An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action;”

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IV. The substance of a Telephonic communication with Brian L. Johnson, Special Program Examiner on April 26, 2005.

I Applicant and Mr. Brian L. Johnson, Special Program Examiner discussed the Advisory Action mailed on 4/21/05. We attempted to find reasoning why the advisory action was issued. Mr. Johnson AGREED that the advisory action should have stated more of a reason than just 37 CFR § 1.116 (e); at which point in the discussion, after Applicant conveyed that the 1/7/05 Affidavit was timely filed and IN RESPONSE to The Final Action, Mr. Johnson referred to MPEP 715.09 Seasonable Presentation. Mr. Johnson inquired if I had met this 715.09 requirement; where I responded that I utilize the statutes (U.S.C.), regulations (CFR), and patent guides (MPEP—‘office guidelines’) in order of importance as listed, and yes I did meet this MPEP guideline. Specifically 715.09 (c) (1), which states:

“Affidavits or declarations under 37 CFR 1.131 must be timely presented in order to be admitted. Affidavits and declarations submitted under 37 CFR 1.131 and other evidence traversing rejections are considered timely if submitted:

-
-
-

(C) after final rejection and submitted

(1) with a first reply after final rejection for the purpose of

overcoming a new ground of rejection or requirement made in the final rejection, or...”

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We also discussed 37 CFR 1.116 (b) (1) and (e). Mr. Johnson also made mention of MPEP 502.03 as to how email communications can be apart of the record, at which time I Applicant communicated that Mrs. Kincaid did not advise me of this rule. **NOTE: APPLICANT COMMUNICATED THE APPROPRIATE LANGUAGE TO THE FIRST EXAMINER JORDAN GOLINKOFF SO THAT EMAILS COULD BE INCLUDED IN THE RECORD, AND IT WAS NEVER WITHDRAWN.** I, Applicant was advised that technically the patent application was abandoned based on statutory time limits, at which time I, Applicant stated that I was contemplating filing a complaint with The United States Department of Justice, and that if there was an error in the issuing of the advisory action that it should and could be rescind based on The Examiner's error and The AGREEMENT MADE (4/19/04---Telephonic Interview) WITH KRISTINE KINCAID, SPE 2100.

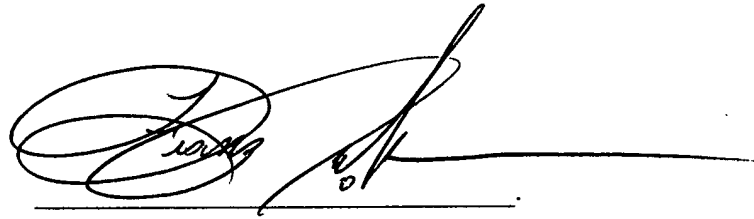
V.

The substance of a Telephonic communication with Paul Sewell, SPE on or about April 26, 2005:

I Applicant and Mr. Sewell discussed and walked-through the 1/7/05 Affidavit in a telephone conversation. This discussion was directly related to the advisory action mailed on 4/21/05. Applicant communicated that the advisory action was deficient and corroborated the discussion on this topic with the statements from the individuals in The Petitions Department of The USPTO. We proceeded to walk-through the 1/07/05 Affidavit, where Applicant drew the attention of Mr. Sewell to the first statement in the Affidavit: **"This Affidavit is responsive to a Detailed Action (Final Action) filed on 10/06/2004; and is made pursuant to CFR 1.131."** Applicant communicated to Mr. Sewell that ALL of the direction from the examining core was adhered to in response to

the final rejection, including relevant cases that would act as persuasion and not controlling in the prosecution of this patent application. I, Applicant also communicated the undue burden that was being experienced because of the lack of proper examination and documentation. Mr. Sewell suggested that I file a petition to the director under 37 CFR § 1.181, at which time I communicated that my right to file under 37 CFR 1.137 (A) or (B) should not be eliminated by coercion. There was no agreement reached between Mr. Sewell and I; but I duly communicated that I would continue my complaint with Mr. Peter Wong, Mr. Stewart Levy, (Technology Center 2100 Directors) and The FBI.

Respectfully Submitted,



Mr. Franz A. Wakefield, Pro Se Applicant & Inventor
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